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The 'Title of New Donation' in Medieval Hungarian Law

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Introduction

FROM the 1320s onwards, it was common for Hungarian royal charters to refer to property granted of the crown as being awarded 'by title of new donation' (*titulo novae donationis*).[1] By the last decades of the fourteenth century, most royal donations of land were bestowed under this term, to such an extent indeed that the formula appears in charters as the normal accompaniment to royal gifts. Although references to the title of new donation decline during the first half of the fifteenth century, and thereafter become increasingly rare, the formula remained a part of Hungarian law until 1848.

In the fourteenth and fifteenth centuries as well as in the early modern period, the title of new donation was often combined in the texts of royal charters with the so-called *clausula*. This explained that the present owner had declared himself to have long been in uncontested possession of an estate (*in cuius pacifico dominio ipse a dudum superstitisse et eciam de presenti persistere asserit*), but that on account of some misfortune the original charter attesting to his rights of possession had been lost. Fire or the depredations of an enemy were often given as reasons for loss. In response to the petition, the chancellery would usually dispatch an inquisition. Depending on the inquisition's report, the chancellery would issue a replacement-charter given *sub titulo novae*

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[1] The earliest reference to the title of new donation is in a charter of 1281. Almost certainly, the charter, which survives only in a transcript of 1324, is interpolated: see Imre Szentpétery, Iván Borsa, *Regesta regum stirpis Arpadianae critico-diplomatica*, 2 vols, Budapest, 1923–87 (hereafter, *Regesta regum*), ii, parts 2–3, no. 3113. Otherwise, the earliest example of which I am aware is from 1317: *Documenta res Hungaricas tempore regum Andegavensium illustrantia (Anjou-kori oklevéltár)*, (eds) Gyula Kristó, László Blazovich, Géza Érszegi, Ferenc Makk, vol. i etc. (in progress), Budapest and Szeged, 1990 etc. (hereafter, *DRHA*), iv, no. 656; for some possible, earlier variants, see Gábor Béli, 'Az új adomány eredete és önálló intézményyé válása', in (eds) Máthé Gábor and János Zlinszky, *Degré Alajos emlékkönyv*, Budapest, 1995, pp. 59–66, and József Gerics and Erzsébet Ladányi, 'Imperium merum et mixtum und nova donatio in Ungarn im 13. Jahrhundert', *Annales Universitatis Scientiarum Budapestiniensis, Sectio Historica*, 26, 1993, pp. 141–53 (first published in Hungarian in *Levéltári Szemle*, 1986, pp. 21–30).

donationis which affirmed the current owner's rightful possession of the estate. The use of the title of new donation as a way of compensating for the loss of deeds is affirmed in fifteenth-century and subsequent legislation, in later medieval formularies and in the textbooks of early nineteenth-century jurists.[2] Eighteenth-century laws indicate that such remedies for loss might be readily obtained without the need to proceed through the central courts of the realm.[3]

The role of the title of new donation in remedying lost deeds was, however, only one aspect of the device's larger function in redressing defective titles. As a consequence of the transition from memory to the written record in the thirteenth and fourteenth centuries, many Hungarian landholders found that they lacked a formal instrument attesting to their rights of possession. Their land had been obtained or occupied at a time before it was normal for rights of ownership to be recorded in writing. The conversion of estates from enterprises worked collectively by the kindred to *portiones possessionaria* which were retained and managed by family groups within the kindred prompted in its turn a demand for new letters of title which affirmed the rights of these smaller units.[4]

As written evidence became increasingly necessary proof of ownership, so mechanisms for converting customary titles into legally demonstrable instruments were ever more in demand. The title of new donation filled the gap. As was the case with lost charters, an inquisition would take evidence from neighbours and fellow nobles as to past and present ownership of the estate. Providing the inquisitors' report was satisfactory, the chancellery would then issue letters affirming the current owner's rights of possession and would explain these as grants given under the title of new donation. The occupier was thus vested with a formal instrument of possession which could be used to thwart predatory claims to his estate.

The periodic replacement of royal seals released in its turn a tide of petitioners to the chancellery. Faced with the prospect of their existing

[2] *Laws of the Medieval Kingdom of Hungary – Decreta Regni Mediaevalis Hungariae*, (eds) János Bak, György Bónis, Leslie S. Domonkos, Pál Engel, Paul. B. Harvey, James Ross Sweeney, 3 vols, Los Angeles, 1989–96 (hereafter, *DRMH*), iii, p. 21 (1464: 20; see also 1498: 78); M. G. Kovachich, *Formulae Solennes Styli*, Pest, 1799, pp. 502, 528–29; Ignácz Frank, *A közigazság törvénye Magyarhonban*, 2 vols, Buda, 1845–47, i, pp. 301–08; Baron Ignatius Eötvös (Senior), *Extractus Synoptico Encyclopaedius Legum in Corpore Juris Hungarici contentarum*, Buda, 1829, p. 49; Emericus Kelemen, *Institutiones juris privati*, 3 vols, Buda, 1818, ii, p. 112: *Nova donatio universa accepta, collatio est, qua Majestas alicui, bonum per familiam jam prius diu, et pacifice possessum, de recenti impertitur, cum clausula: In cujus pacifico Dominio progenitores suos perstitisse, seque persistere, asserit etiam de praesenti, damus etc.*

[3] Paulus Szlemenics, *Elementa Juris Hungarici Civilis Privati*, 2 vols, Pressburg, 1819, i, pp. 246–47, citing 1741: 19.

[4] The point is well made in Gerics and Ladányi, 'Imperium merum et mixtum', pp. 146–50.

instruments of ownership being declared defective on account of the substitution of seals, landholders would petition for the formal reissue of their existing charters under the latest royal seal. Although chancellery practice was in this respect imprecise in its choice of terminology, it was not unusual for such confirmations of pre-existing grants of land to be made *sub titulo novae donationis*. Following the replacement of the king's great seal in 1323, there was a wave of petitions to the chancellery for the reissue of charters, not a few of which were published as charters given under the title of new donation.[5]

Inevitably, the institution of the title of new donation was abused by some petitioners. Pretending that their original charters were either lost or in some way defective, petitioners requested the chancellery to regrant land on terms which effectively changed the manner of its inheritance. The early sixteenth-century jurist, Stephen Werbőczy, was most critical of petitioners who excluded heirs to an estate by fraudulently claiming that their property either descended or did not descend through the female line, and having a charter to this effect drawn up *titulo novae donationis*. Werbőczy regarded this misuse of the title of new donation as perjury and as a 'betrayal of brotherhood' (*proditio fraterni sanguinis*).[6]

Specification of Heirs

Medieval codes as well as most later jurists agree that the title of new donation might only be awarded to those already in possession of an estate. As Werbőczy stated, the title of new donation *semper praesupponit priorem donationem, vel aliam bonorum ipsorum acquisitionem*.[7] For this reason, the title of new donation is usually associated in the legal literature with the *clausula* by which, as we have seen, the petitioner asserted his previous and uncontested ownership of a property. Clearly, however, many petitioners for the title of new donation were not in prior possession of the estate which they claimed, but sought instead to have this formula included within the original charter of donation on the occasion of its first issue. Werbőczy himself acknowledged this phenomenon, but he regarded it as an aberration which he was unable (or

[5] Imre Szentpétery, *Magyar oklevéltan*, Budapest, 1930, p. 199; Georgius Fejér, *Codex Diplomaticus Regni Hungariae Ecclesiasticus et Civilis*, 11 vols in 40 parts, Buda, 1829–44 (hereafter, *CD*), viii/2, pp. 441–44, 451; *DRHA*, vii, nos 419, 547, 548, 661.

[6] Stephanus de Werbewcz, *Tripartitum opus juris consuetudinarii inclyti regni Hungariae*, I: 36; ibid., 1: 38. (hereafter, *Tripartitum*). All quotations from the *Tripartitum* are taken from the so-called Millennium edition, (eds) Sándor Kolozsvári, Kelemen Óvári, Dezső Márkus, Budapest, 1897; for examples of the new donation being used to alter terms of inheritance, see *Zsigmondkori Oklevéltár*, (eds) Elemér Mályusz, Iván Borsa, vol i etc., Budapest, 1951 etc. (hereafter *ZsO*), ii/2, no. 4666; ibid., vi, no. 992; *Oklevelek Temesvármegye és Temesvár város történetéhez*, (eds) Frigyes Pesty and Tivadar Ortvay (hereafter, *Oklevelek Temesvármegye*), i, Pozsony, 1896, p. 21.

[7] *Tripartitum*, I: 37 (1).

unwilling) to explain.[8] More recent commentators have, however, alighted upon this apparent peculiarity as if a discovery all of their own. Some early nineteenth-century jurists certainly recalled that the title of new donation might be applied to other than previously-held estates and that it did not automatically constitute an *iterata donatio*.[9] Thereafter, however, the memory of historians and lawyers lapsed. In 1916, Arisztid Oszváld and Baron Gyula Forster ascertained anew that the formula might be used in donations of the first instance and not just in confirmations of previously-existing grants.[10] In 1941, József Illés made the identical point, and, almost sixty years later, Pál Engel has reminded us of the same.[11] In the intervening years, historians and jurists have been largely content to explain the title of new donation as an instrument which was conferred on previously-held estates in order to compensate for deficiencies in the existing title of ownership. All other instances of its use are described as being either infrequent or anomalous.[12]

In seeking to explain the use of the title of new donation in instruments conferring original grants of estate, Pál Engel has drawn attention to the changes attending landownership in fourteenth-century Hungary. Engel argues that during the 1340s there was a shift in the terms of land-inheritance in Hungary from descent through the kindred to descent through specified heirs. These specified heirs were mainly sons, but sometimes brothers might also be included. The title of new donation provided a mechanism for obviating the claims of collateral branches of the family and for limiting rights of inheritance to immediate heirs. According to Engel, the title of new donation was most frequently invoked in royal charters as a way of restricting the inheritance rights of the kindred. The title of new donation thus 'stood at the centrepoint' of a new trend in property-relations in Hungary which substituted lineal descent for inheritance within the kindred.

Engel's analysis is brilliant and is likely to become the new orthodoxy. His explanation presents, however, several difficulties. We do not doubt

[8] *Tripartitum*, I: 37 (6). Werbőczy's subsequent analysis in ibid., I: 37 (8), suggests that he fully comprehended how the device was used in original charters of donation.

[9] Ignácz Frank, *A közigazság törvénye*, i, pp. 301–04; see also, Alexander Kövy, *Elementa jurisprudentiae Hungaricae*, Sárospatak, 1823, pp. 143–44.

[10] Arisztid Oszváld, 'Hunyadi János ifjúsága', *Történeti Szemle*, 5, 1916, pp. 354–65, 490–507 (492–93); Baron Gyula Forster, 'Hunyadi János származása és családja, i', *Budapesti Szemle*, vol. 165, no. 470, pp. 390–410 (395–96).

[11] József Illés, 'A nova donatio (új adomány) jogi természete', in (eds) Pál Angyal, Jusztin Baranyay, Mihály Móra, *Notter Antal emlékkönyv*, Budapest, 1941, pp. 634–44; Pál Engel, 'Nagy Lajos ismeretlen adományreformja', *Történelmi Szemle*, 39, 1997, pp. 137–57. Engel's argument is summarized in Martyn Rady, *Nobility, Land and Service in Medieval Hungary*, Basingstoke and New York, 2000, pp. 97–102.

[12] Thus, for instance, Attila Zsoldos in (eds) Gyula Kristó, Pál Engel, Ferenc Makk, *Korai Magyar Lexikon*, Budapest, 1994, p. 697.

that during the course of the fourteenth century an alteration occurred in the terms of land-inheritance in Hungary.[13] At the beginning of the century, it was generally understood that land passed upon the owner's death to his kindred. The kindred, however, never formed a homogeneous category. On the one hand, it was generally held that superior rights of inheritance belonged to those of its members who stood in a closer blood-relationship to the owner.[14] On the other, it was maintained that those cousins and relatives with whom the owner customarily shared his land, had precedent rights to the estate upon the occasion of its division.[15] As Engel indicates, during the fourteenth century a far higher degree of specification of rights of inheritance is apparent in royal charters granting land, which served to restrict the rights of both *proximi* and *fratres condivisionales* to the estate. In place of the generic formula often found in earlier royal charters of donation, which ceded land to a beneficiary *et per eum suis heredibus*, we thus encounter clauses designed to restrict inheritance to sons or to named brothers, often at the express expense of other members of the kindred: hence, *exclusis omnibus fratribus suis carnalibus patruelibus et consanguineis cum quibus divisio in eorum possessionibus hereditariis fieri est opportuna*; *exceptis et exclusis omnibus aliis fratribus suis tam uterinis patruelibus vel aliis quibuslibet*, and so on.[16] Indeed, by the end of the fourteenth century, it was generally assumed that direct descendants alone inherited an estate and that the rights of the larger kindred only came into effect when the owner died without immediate male heirs. Circumscription of the rights of the kindred clearly benefited the crown which was ever anxious to extend the grounds upon which it might lay claim to estates on the pretext that the property had no legal heirs.[17]

It is, however, by no means clear that the inclusion in charters of the formula *titulo novae donationis* was in any way related to the specification of heirs described by Engel. Engel argues that the circumscription of the rights of the kindred occurred during the 1340s, at the very same time as there was a rapid increase in the incidence of the 'title of new donation' formula. As Engel, however, concedes, we know of earlier

[13] Engel, p. 148; see also Martyn Rady, 'Erik Fügedi and the Elefánthy Kindred', *Slavonic and East European Review*, 77, 1999, pp. 295–308.

[14] *DRHA*, xxiii, no. 74; *ZsO*, iii, no. 1677; ibid., v, no. 269; *Oklevelek Temesvármegye*, i, Pozsony, 1896, p. 21; *Zala vármegye története*, (eds) Imre Nagy, Dezső Véghely and Gyula Nagy, 2 vols, Budapest, 1886–90, ii, pp. 384–85; *Codex Diplomaticus Patrius*, (ed.) Imre Nagy, 8 vols, Győr-Budapest, 1865–91 (hereafter, *CDP*), ii, pp. 104–05. See also, József Illés, *A törvényes öröklés rendje az Árpádok korában* (Értekezések a Történelmi Tudományok Köréből, xiii/3), Budapest, 1904, pp. 7, 57–62.

[15] *CDP*, ii, pp. 82–84; *Anjou-kori okmánytár* (*Codex Diplomaticus Hungaricus Andegavensis*), (eds) Imre Nagy, Gyula Nagy, 7 vols, Budapest, 1878–1920 (hereafter, *AO*), iii, pp. 427–28; ibid., iv, p. 450; ibid., v, pp. 33–34, 247–48, 542–43.

[16] *CDP*, ii, p. 83; *AO*, v, p. 34.

[17] Engel, pp. 151–53.

examples of specification, dating from the 1320s and 1330s, in which the formula was not invoked: hence from 1326, *exceptis aliis fratribus suis uterinis proximis*, or, ten years later, *cum nullo ex predictis fratribus suis uterinis et patruelibus et generacionalibus participare et dividere teneretur.*[18] Moreover, at least one example which Engel gives in proof of his case is a circumscription of ownership rights, which explicitly denied members of the kindred any rights of concurrent ownership of an estate awarded to one of its members. Examples of this form of exclusion are familiar from an earlier period and were, likewise, universally accomplished without reference to the title of new donation.[19]

In support of his argument that the specification of heirs was linked to use of the title of new donation, Engel lists twenty-one royal charters dating from the period 1343 to 1350. Of these twenty-one charters, eight turn out upon closer inspection not to have been given *titulo novae donationis*.[20] Furthermore, in the list given by Engel, only five charters ceding land by title of new donation can be at all explained by reference to the specification of heirs.[21] For two others given by Engel are, in fact, confirmations of previously-issued charters that were intended to remedy a prior defect.[22] Thus, less than a quarter of Engel's list supports his argument that the title of new donation was employed as a way of specifying heirs and of restricting the rights of inheritance of the larger kindred.

The uncertainty of the relationship between the title of new donation and the specification of heirs is further demonstrated by a single charter which, on account of its confirmation of an earlier deed, Engel counts twice in his list.[23] In 1343, Stephen Lackfi obtained from the king the castle-lordship of Simontornya. In the royal charter accompanying the donation, Stephen specified his sons rather than his kinsmen as heirs to the property and he had his sons listed by name. The charter made no mention, however, of the estate being given by title of new donation.

[18] *A nagymihályi és sztárai Gróf Sztáray család oklevéltára*, (ed.) Gyula Nagy, 2 vols, Budapest, 1887–89 (hereafter, *Sztáray*), i, pp. 55–56; *AO*, iii, p. 427–28; see also, *AO*, ii, p. 165, which should be read in conjunction with Antal Pór, 'Az Osl-nemzetség története a xiii. és xiv. században', *Turul*, 8, 1890, pp. 153–200 (185–87).

[19] *AO*, ii, pp. 608–09; *Codex Diplomaticus Domus Senioris Comitum Zichy de Zich et Vasonkeő*, (eds) Imre Nagy, Iván Nagy, D. Véghely, E. Kammerer, P. Lukcsics, 12 vols, Budapest, 1871–1931 (hereafter, *Zichy*), i, p. 376; *DRHA*, xxiii, nos 343, 429, 566, 725.

[20] Engel, pp. 148–51, nos 1–5, 10, 15, 16: *Sopron vármegye története. Oklevéltár*, (ed.) Imre Nagy, 2 vols, Sopron, 1889–91 (hereafter, *Sopron vármegye*), p. 197; *AO*, iv, p. 306; *CD*, ix/1, pp. 85–90; *AO*, iv, pp. 420–21, 450; ibid., v, pp. 33–34, 247; Hungarian National Archive, *Collectio Antemohácsiana* (hereafter, *Dl.*), *Dl.* 16099.

[21] Engel, pp. 148–51, nos 6, 7, 18, 20, 21: *Dl.* 40973; *CDP*, ii, pp. 82–84; *AO*, v, p. 341; *Dl.* 93782; *CD*, ix/1, p. 762.

[22] Engel, pp. 148–51, nos 11, 17: *Sopron vármegye*, i, pp. 196–201; *Oklevéltár a Tomaj nemzetségbeli Losonczi Bánffy család történetéhez*, (ed.) Elemér Varjú, 2 vols, Budapest, 1908–28 (hereafter, *Bánffy*), i, p. 160.

[23] Engel, pp. 148–51, nos 1, 11: *Sopron vármegye*, i, pp. 196–201.

Four years later, Stephen asked King Louis to confirm the gift. On this occasion, the accompanying charter referred to the award as being made by title of new donation, but it omitted to name the heirs by person. As this example suggests, definition of precisely who constituted the heirs to an estate might be accomplished without any reference to the title of new donation. Equally though, the subsequent inclusion in deeds of the title of new donation might involve no explanation of quite who was intended to inherit the relevant property.

The Royal Right

In order to understand the purpose of the title of new donation, we should return to the account which Stephen Werbőczy gave at the beginning of the sixteenth century. While conceding that the title of new donation fulfilled several licit and illicit purposes, Werbőczy insisted that its principal function should be considered 'in respect of the crown'. According thus to Werbőczy, the inclusion in charters of the title of new donation was primarily intended to restrict the rights of the crown to an estate, in which respect it 'always holds force and is efficient' (*semper valet, et semper est efficax*). Werbőczy went on to explain that 'rights to property so ceded [i.e. by title of new donation] cannot be claimed any more by anyone on grounds of royal right or of extinction of seed' (*Nec poterit per alterum quempiam, jus tale possessionarium, nomine juris regii, vel alio, defectus seminis titulo, de caetero impetrari*).[24] In what follows, we will explain the vocabulary which Werbőczy uses in the preceding passage and we will argue that Werbőczy's account provides a more satisfactory account of the title of new donation than Engel's argument which rests on the specification of heirs. First, however, we must briefly address the nature of royal landownership and donation in later medieval Hungary.

By the fourteenth century, the large reserve of royal lands which had sustained the earlier line of Árpád kings had been distributed to the new estate of nobles. Little remained except for the retaining districts attached to royal castle-lordships. Fresh grants of land depended therefore upon the return to the fisc of estates which had escheated by reason either of default of heirs (*defectus seminis*) or of act of treason (*nota infidelitatis*). Lands which fell to the crown by reason of *defectus* or *nota* were commonly described as belonging to the crown 'by royal right' (*iure regio*). This term might also be used in respect of any estate to which the crown laid claim to ownership, including those which had been in royal hands 'for longer than the capacity of mortal memory'.[25] Unscrupulous nobles who occupied the estates of heirless landholders

[24] *Tripartitum*, I: 37 (8).
[25] *AO*, vi, pp. 535–36.

upon their death or who simply took over royal properties without authorization, were by extension known as 'concealers of royal rights' (*celatores iurium regalium*).[26]

By the late thirteenth century, it was generally held that the crown should reapportion land which passed to it by *defectus* or *nota*.[27] When a nobleman died without heirs or was judged guilty of treason, his neighbours and other nobles would commonly, therefore, petition the king for a part or all of his estate. Alternatively, they might ask the king that they be given a piece of royal property or part of a castle-lordship in recompense for their past services. The problem was, however, twofold. First, the crown had no record either of its own property or of the estates belonging to individual noblemen. Although the chancellery kept summaries of all royal charters conveying donations of land, these were arranged by year, were not indexed, and did not record the subsequent destiny of estates.[28] Establishing current ownership by reference to the so-called 'royal books' was therefore almost impossible. Likewise, the crown had no immediate knowledge as to whether a landholder had really died without heirs and, by consequence, whether or not his estate now belonged to the king by royal right. Moreover, and as we have seen, the definition of quite who constituted heirs was uncertain. Did heirs consist of relatives whose respective rights were calibrated according to proximity of blood-relationship, or were they instead those kinsmen with whom it was customary to apportion land on the occasion of its division? A petition for land was thus often denied until the outcome of an inquisition was known. The inquisition usually comprised a member of a nearby ecclesiastical chapter and a royal bailiff (*homo regius*). The second of these was selected from out of the local nobility possibly on the recommendation of the petitioner. The two inquisitors took oral evidence of neighbours and reported back to the chancellery any protests to the petitioner's livery of seisin (*statutio*). In view of the uncertainties attending this procedure, it was not unusual for the king to award the same property to several or more petitioners or to give away lands which still had rightful owners.[29] Gifts of land or confirmations of deeds made by the king on the field of battle in token of some particular act of heroism, only added to this confusion.[30]

[26] *DRMH*, iii, p. 132.

[27] Gerics and Ladányi, 'Imperium merum et mixtum', p. 152.

[28] On the 'royal books', see Imre Hajnik, *A királyi könyvek a vegyes házakbéli királyok korszakában* (Értekezések a Történelmi Tudományok Köréből, viii/3), Budapest, 1879, pp. 3–18.

[29] *A Héderváry-család oklevéltára*, (eds) Béla Radvánszky, Levente Závodszky, 2 vols, Budapest, 1909–22 (hereafter, *Héderváry*), i, p. 31; *Zichy*, ii, p. 355; *AO*, ii, p. 313; ibid., iv, pp. 112, 132; ibid., v, p. 31; *CDP*, i, pp. 104–05; *ZsO*, v, nos 1194, 2096. Petitioners might also make claims which they knew to be false, see thus *ZsO*, iii, nos 812, 916.

[30] *DRHA*, iv, nos 306, 584, 585, 594, 598, 599, 601, 602, 605, 613 etc.

Secondly, since the royal right was held to attach to all properties which belonged to the crown, it was important to obtain an explicit assurance that the royal right was revoked and that it no longer attached to the estate. Otherwise, not only might the donated land be repossessed by the ruler on the pretext that the *ius regium* still attached to it, but a second petitioner might subsequently request the property on the grounds that it still remained a part of the royal fisc. Relatives of allegedly heirless owners whose properties had devolved to the crown by reason of *defectus* and then been reapportioned, were in this respect a particular nuisance. Since the period of limitation (*prescriptio*) of the *ius regium* was a hundred years, they or their descendants might long afterwards petition the crown to exercise its rights of repossession and, by re-awarding the property to themselves, so remedy an ancient injustice done.[31] On account of the lapse of time and memory, it was in such cases often impossible to resolve the question of ownership by recourse to an inquisition and to the testimony of neighbours. Petitions of this sort almost invariably therefore presaged a long legal fight in the chancellery.[32] A further difficulty arose in respect of properties which had previously devolved to the crown by way of treason. It sometimes happened that the king pardoned the original owner or that the charges brought against him were found to be false. In such cases, the recipient of the property might find his right to the land in question contested by the previous owner and his heirs. Should the royal right still adhere to the estate, then it might all too easily be repossessed by the ruler and returned to the injured party.[33]

In view of the dangers posed by residual royal rights attaching to a property, recipients of royal land found it expedient to request the inclusion in the charter of donation of a clause which set aside the *ius regium*. In the majority of cases, petitioners sought this clause in cases where the property had previously reverted to the crown on grounds of *defectus* or *nota*, and where a subsequent dispute over the terms of possession was most likely to arise.[34] Several formulas were used. It might simply be that the king ceded the estate 'by [all] that right by which it is deemed to belong to our possessions' (*[omni] eo jure quo ad nostram pertinere dinoscitur collacionem*), or, less ambiguously, 'with complete right' (*cum plenitudine iuris*; *pleno iure*) and 'with all right and all ownership and dominion' (*totum ius totamque proprietatem et dominium*).[35] From the 1320s onwards, however, clauses such as these were frequently combined with reference to the title of new donation: hence, *eo jure quo*

[31] The *prescriptio* in respect of estates was otherwise thirty-two years.
[32] *ZsO*, iii, no. 2347.
[33] *CDP*, i, p. 117; *AO*, iv, p. 296; *Regesta regum*, ii, parts 2–3, no. 3113.
[34] Béli, 'Az új adomány eredete', p. 64.
[35] *CDP*, i, p. 117; *AO*, ii, pp. 368–69; ibid., iv, pp. 91–92.

nostre collacioni . . . pertinere noscuntur nove nostre donacionis titulo.[36] In view of the contemporary use of the title of new donation in remedying defective rights in general, it is not surprising that it should have been coupled in this way to a clause which sought to establish the complete legal ownership of property. Indeed, the association of the title of new donation with the setting aside of the royal right had by the middle years of the fourteenth century become so close that the *eo jure quo* clause was frequently omitted altogether.[37] In similar fashion, the link between the title of new donation and estates which had previously passed to the crown by *defectus* or *nota*, was generally understood in such a way for the formula to be considered a natural accompaniment to all gifts which had their origin in transfers of this type: hence, from the text of a royal charter of 1339 giving lands in Hont county to a squire of the royal court, *pro suis preclariis serviciorum meritis per modum nove donacionis nomine possessionis hominis heredum solacio carentis per nostram maiestatem tradite.*[38]

The relationship between the title of new donation, the setting aside of the royal right, and lands which were owed to the crown by *defectus* and *nota*, may be illustrated by two examples from the 1320s and 1330s. Study of these two cases additionally illustrates why it is easy to mistake the title of new donation for a royal act the purpose of which was to restrict the rights of the kindred to an estate.

In 1326, King Charles Robert awarded Gregory Nagymihályi two properties in Bihar county in recompense for his services. The charter issued on this occasion excluded Gregory's brothers from any share in the estate (*exceptis aliis fratribus uterinis proximis*), but made no mention of a title of new donation. Upon taking up possession of the two estates, Gregory discovered that they had a history. Originally, the properties had escheated to the crown on grounds of *defectus* and had been re-awarded to a certain John. This John had, however, been later found guilty of treason and the two estates had been repossessed by the crown before being passed on to Gregory. The possibility therefore remained that the estates could be claimed by any relatives of the original owner whose rights had been overlooked at the time they were first claimed by the fisc. Moreover, the charge of treason might be lifted against John, in which case either he or his heirs might petition for the return of the properties. Gregory, upon realizing the precariousness of his

[36] The earliest examples of which I am aware are *Oklevelek Temesvármegye*, p. 21; *CDP*, i, pp. 118–19. As a variant, *omni eo jure et titulo quibus ad nostram dinoscuntur collacionem* could be used, which might or might not subsequently introduce the formula *titulo novae nostrae donationis*: CDP, ii, p. 142; *Zichy*, iii, pp. 476–77.

[37] *AO*, v, pp. 132–33, 155, 339–41, 411–12.

[38] *Hédervári*, i, p. 31: the recipient is described as a *iuvenis aulae*. See also below, n. 40.

ownership, immediately petitioned the king for a title of new donation which set aside all remaining royal rights to the two properties.[39]

Several years earlier, Dominic, son of Peter, while on his deathbed, gave all his estates to a certain Kopoz. Dominic had no male heirs and he made the transfer conditional upon Kopoz marrying his daughter. Following Dominic's death, Kopoz petitioned the king. Kopoz acknowledged that all land which had belonged to persons without male heirs devolved to the crown, but he asked the king to set aside in his favour all royal rights to the lands in question. King Charles Robert generously acceded to Kopoz's request, granting the properties to him by title of new donation. As with the grant to the royal squire in 1339, quoted above, the text of the charter confirming the award expressly associated the title of new donation with the bestowal of properties over which the crown held rights by reason of *defectus*: hence, *petens a nobis* [i.e. *rege*] ... *ut memoratam donacionem dictarum possessionum ratificare easdemque possessiones sibi* [i.e. *Kopoz*] *eo jure quo nostre collacioni tamquam possessionis hominis sine herede decedentis pertinere noscuntur nove nostre donacionis titulo dare et donare perpetuo dignaremur.*[40]

As these examples suggest, petitioners sought a title of new donation not as a way of thwarting their relatives but instead to consolidate their rights of ownership against the crown or any other claimant who sought to rest his case on the royal right. The two cases to which we have just referred, originate from the 1320s and 1330s. Similar considerations, however, affected the use of the title of new donation in the following decade. As we have seen, of Engel's original list of twenty-one charters dating from 1343 to 1350, only thirteen actually make reference to the title of new donation.[41] To these, however, we may add three from the same period which Engel omits.[42] Of the new total of sixteen, we must exclude two since they are confirmations of charters which were otherwise defective.[43] Let us look, therefore, at the remaining fourteen. Of these, five were issued on account of the lands in question having previously devolved to the crown by *nota* or *defectus*.[44] In a further case, it was expressly conceded that the chancellery had no knowledge as to the terms by which the property belonged to the crown (*veritas non constat*).[45] In all other cases, it is not explained how the property came

[39] *Sztáray*, i, pp. 53–56.
[40] *CDP*, i, p. 119; see also *DRHA*, xxiii, no. 74.
[41] Engel, pp. 148–51, nos 6–9, 11–14, 17–21: *Dl.* 40973; *CDP*, ii, pp. 82–84; *AO*, iv, p. 514; *Dl.* 38487; *Sopron vármegye*, i, pp. 196–201; *AO*, v, p. 155; ibid., 132–33; *Oklevéltár a Gróf Csáky család történetéhez*, (ed.) László Bártfai Szabó, Budapest, 1919, pp. 99–100; *Bánffy*, i, p. 160; *AO*, v, p. 341; *Sopron vármegye*, i, pp. 212–13; *Dl.* 93782; *CD*, ix/1, p. 762.
[42] *AO*, v, pp. 301–03, 411–12, 420.
[43] Engel, pp. 148–51, nos 11, 17.
[44] Ibid., nos 6, 8, 18, 23, 25 (no. 6 should be read in conjunction with Erik Fügedi, *Vár és társadalom a 13–14. századi Magyarországon*, Budapest, 1977, p. 179).
[45] Ibid., no. 12.

into the royal possession. Nevertheless, in almost a half of cases coming from the 1340s which form part of Engel's (amended) list, a clear link may be demonstrated between the grant of lands which had passed to the crown by *nota*, *defectus* or in an avowedly uncertain manner, and the award of a title of new donation.

The relationship between lands which passed to the crown by *defectus* or *nota* and their subsequent re-award under the title of new donation is more convincingly demonstrated by reversing our method of inquiry. Of the complete list of 24 charters, which is made up of Engel's original list and the three other instances which we have identified, eleven involved properties which had either devolved to the crown by *nota* or *defectus*, or were else properties of which the crown had no knowledge of ownership. Of these eleven, all but two were granted out by the crown either by title of new donation or by reference to the *eo iure quo* clause the use of which was, as we have seen, closely connected to the title of new donation. Of the exceptions, one was granted by reference to the formula *prout nostre collacioni pertinere dignoscitur*, which may simply be a variant to *eo iure quo*.[47] The second was ceded in 1343, at the very start of our sequence, and so possibly at a time before chancellery practice had stabilized.

Those petitioners who during the 1340s sought the title of new donation on properties which had not previously been acquired by the crown on grounds of *nota* or *defectus*, were probably motivated by a desire to reinforce their property rights with whatever form of guarantee as was available to them. Since even the chancellery did not have knowledge of the extent and origin of royal estates, it made sense for those in receipt of royal grants to have the title of new donation included in the texts of charters as a way of thwarting any subsequent claims on the estate. During the 1350s and 1360s we may thus observe that not only was it usual for recipients of *nota* or *defectus* land to have the title of new donation included in their deeds, but that many beneficiaries of other types of royal estate also sought to have the same clause written in their charters. On those occasions where the title of new donation was not included, the older *eo iure quo* clause was usually included in its place.[48]

The Fifteenth Century

By no later than 1387, the title of new donation had become a feature of all charters recording royal gifts, including those which involved lands whose history was known and over which disputes were unlikely

[46] Ibid., nos 1, 2, 4, 5, 6, 8, 10, 12, 18; *AO*, v, pp. 411–12, 420.
[47] The exceptions are nos 1 and 4.
[48] *CDP*, i, p. 223; ibid., ii, pp. 125, 129, 142–44, 150; ibid., iii, pp. 176–77, 241; *Zichy*, ii, pp. 450–51; ibid., iii, pp. 476–77.

to arise.[49] Most probably, this concern to have grants of land accompanied with a formal guarantee against royal repossession had its origin in the political turmoil surrounding the Luxemburg succession. At around this same time, the original purpose of the title of new donation — namely, to remedy defective titles of ownership — was assumed by a new clause. Petitioners who lacked proper deeds of ownership or who had lost their charters on account of some mishap, were thus often regranted their land under the clause *denuo et ex novo. . .dedimus* rather than by reference to the *titulo novae donationis*.[50] Once the title of new donation had assumed the character of a blanket clause covering all royal grants of property, the original purpose of this device had necessarily, so it appears, to be assumed by a separate formula.

The seemingly indiscriminate use of the title of new donation persevered until the end of the second decade of the fifteenth century. Around 1419, however, we notice a change in its application which we cannot explain but which may have been connected to the contemporary reorganization of the chancellery and of its procedures.[51] Thereafter, the title of new donation passed quite rapidly into decline, ceasing to be used except in cases where owners lacked adequate charters attesting to their rights of ownership or where the property in question might reasonably be claimed by the crown on grounds of royal right. Properties obtained through *defectus* or *nota* continued until the 1460s to be intermittently granted *titulo novae donationis*, although in this respect there appears to be little consistency of practice.[52] During the course of the later fifteenth century, the title of new donation was restored as a way of making up for lost or defective charters, gradually eclipsing thereby the *denuo et ex novo* formula.[53]

In the second half of the fifteenth century, the title of new donation was commonly employed in two ways. In the first place, it was used to make up for lost charters and was thus linked to the *clausula*. In the second, it was employed to remedy defective titles. In this latter function, it was most commonly associated with a clause which, as in the fourteenth century, was specifically designed to set aside the royal

[49] The latest fourteenth-century examples of properties being ceded by the crown without express reference to the title of new donation are from 1387: *ZsO*, i, nos 75–76.

[50] *ZsO*, iv, nos 2016, 2737; ibid., v, 535.

[51] *CDP*, ii, pp. 211–13; György Bónis, *A jogtudó értelmiség a Mohács előtti Magyarországon*, Budapest, 1971, pp. 95, 102–04.

[52] *CDP*, ii, pp. 259, 289, 290–91, 314, 350–51; ibid., iii, pp. 378, 382–84; ibid., iv, pp. 383–84; *Zichy*, viii, pp. 658–59; ibid., ix, 24–25, 226–27, 351–52, 468–89, 473–74, 507–08, 539–41; ibid., x, pp. 331, 343.

[53] *CDP*, i, p. 335–37; Frigyes Pesty, *A szörényi vármegyei hajdani oláh kerületek* (Értekezések a Történelmi Tudományok Köréből, v/3), Budapest, 1876, pp. 69–70; see also, Costin Feneşan, *Documente medievale bănăţene (1440–1653)*, Timişoara, 1981, pp. 54–56; Kovachich, *Formulae Solennes*, p. 529.

right. Grant of the title of new donation was in this respect still occasionally combined with the *eo iure quo* clause which is familiar to us from the first half of the fourteenth century. It was, however, more usually coupled to a new and more emphatic clause which expressly set aside *totum et omne ius regium si quod in totalibus possessionibus qualitercunque haberemus* [i.e. *rex*].[54] In this later period, it would generally seem that petitioners for the title of new donation were holders of estates which had formerly belonged to the crown but which they had occupied without express authorization.[55] Fearful lest they be denounced as 'concealers of royal rights' and so forfeit their property, landholders of this type sought from the chancellery an instrument which set aside the royal right and thus established their ownership on a more secure legal footing. The loss to the royal fisc of estates which were illegally occupied and then converted into lawful ownership through use of the title of new donation, has never been researched, but is likely to have been significant.

The reduced purpose of the title of new donation is suggested by two chancellery formularies from the reign of Matthias Corvinus (1458–90). Both formularies record the texts of charters used to convey lands which had devolved to the crown by *defectus* or *nota*, or the formulas to be used when an owner had lost his title deeds. The fullest treatment is, however, reserved for cases where the owner petitioned the king to set aside the royal right: *totum & omne Jus nostrum Regium, si quod in dictis portionibus possessionariis, possessionibus praedictis habitis qualitercunque haberemus, aut etiam alias nostram ex quibuscunque causis, viis, modis et rationibus concerneret Majestatem. . . novae nostrae donationis titulo dedimus, donavimus & contulimus* etc.[56] In this respect, late medieval formularies confirm the writings of nineteenth-century jurists. According thus to Ignácz Frank, the title of new donation might be invoked in only two cases: when a property was regranted by the crown on account of a previous defect or loss, or when the royal right was explicitly set aside (thus the formula which he gives, *totum item et omne nostrum jus regium damus*). Or as Alexander Kövy indicated, while the title of new donation might be used to make up for lost charters, it was more properly understood as applying to the royal right. As Kövy explained, *ipsa donatio nova latens jus regium generale et actuale semper involvit et confert*.[57]

[54] *CDP*, ii, pp. 329–30; see likewise, ibid., ii, pp. 224, 247–49, 259, 316, 318, 322–23, 357 etc.

[55] Such is suggested in several early charters of this type wherein the recipients are explicitly described as 'concealers': *ZsO*, iii, no 2359; ibid., iv, no. 400.

[56] Kovachich, *Formulae Solennes*, pp. 528–29.

[57] Frank, *A közigazság törvénye*, i, p. 308; Alexander Kövy, *Elementa Jurisprudentiae Hungaricae*, p. 144.

Conclusion

In his account of the title of new donation, Stephen Werbőczy explained that, 'new donations — either with the royal right or simply — are usually claimed from the prince because the petitioner, although he has some rights of possession, thinks that he may not possess and own the estate lawfully or in accordance with the jurisdiction of the Holy Crown'.[58] It is our contention that Werbőczy's explanation of the title of new donation was broadly correct. The title of new donation was intended to remedy defective deeds and, in particular, to make good claims to ownership which lacked proper documentary support. During the early fourteenth century, however, the title of new donation was also applied to properties to which the crown or other petitioners might lay claim by reference to the royal right. The purpose of the title of new donation was to set aside this right and so establish an existing owner more firmly in legal possession of his estate. This function continued to be expressly associated with the title of new donation throughout the later Middle Ages and even thereafter. As Werbőczy acknowledged, unscrupulous landowners might certainly use the title of new donation as a way of revising the terms of inheritance of an estate.[59] In all other respects, however, the formula had nothing to do either with the specification of heirs or with restrictions on the inheritance of estates.

[58] *Tripartitum*, I: 37 (5).
[59] See above, note 6.